

EXECUTION OF LETTERS ROGATORY

*Exchange of notes at Moscow November 22, 1935; related note of
January 19, 1937*

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EXCHANGE OF NOTES

The American Ambassador to the People's Commissar for Foreign Affairs

EMBASSY OF THE
UNITED STATES OF AMERICA
Moscow, November 22, 1935

EXCELLENCY:

Confirming conversations between the American Embassy in Moscow and the People's Commissariat for Foreign Affairs with regard to the desirability of setting forth the procedure followed in our respective countries in the matter of the execution of letters rogatory issuing out of courts in the other, I have the honor to inform you of the conditions under which and the manner in which courts in the United States may execute letters rogatory issuing out of courts in the Union of Soviet Socialist Republics.

(1) Letters rogatory issuing out of courts in foreign countries are executed in the United States in accordance with the pertinent provisions of the laws of the United States, or of the State or Territory thereof in which resides the person whose testimony is desired, and in compliance with the rules of the executing court. The Government of the United States is, accordingly, not in a position to set forth with precision what may be the requirements of a particular court in the United States at a given time in respect of the execution of letters rogatory issuing out of a court in a foreign country. There are appended, however, copies of the texts of federal statutory provisions now in force which relate to the taking of testimony under commissions or letters rogatory addressed by foreign courts to federal courts of the United States.

It is understood that it is the practice of American courts of appropriate jurisdiction to execute letters rogatory issuing out of foreign courts, if properly prepared and presented, and that no difficulty is likely to be encountered by Soviet courts in obtaining the execution of letters rogatory by American

courts. However, should a Soviet court encounter such difficulty, my Government would, it is understood, upon its attention being drawn thereto through the diplomatic channel, consider what steps it might appropriately take with a view to eliminating the difficulty.

(2) With respect to the question of the manner of transmittal of letters rogatory issuing out of courts in the Union of Soviet Socialist Republics and addressed to courts in the United States, I have the honor to say that neither the Department of State nor any other part of the Executive Branch of the Government of the United States makes a practice of acting as a channel for the transmittal of letters rogatory issuing out of courts in foreign countries and addressed to courts in the United States. In some States of the United States, laws have been enacted requiring letters rogatory to be presented to the State court by the appropriate consular officer of the country in which the testimony is to be used. As my Government is of the opinion that this practice should be generally followed with respect to both Federal and State courts, letters rogatory issuing out of a court in the Soviet Union for execution in the United States should be presented to the court to which they are addressed by the consular officer of the Union of Soviet Socialist Republics in the United States within whose consular district the court in question is located.

(3) While my Government is not, as has been stated above, in a position to set forth with precision what the requirements of a particular court in the United States may be at a given time in respect of the execution of letters rogatory issuing out of a court in a foreign country, my Government desires me to suggest the following points which courts in the Union of Soviet Socialist Republics may find it advantageous to observe in preparing letters rogatory for execution in the United States:

(a) The letters rogatory should be addressed by name to the court in the United States which is to execute them, if that is known; or they may be addressed "To any court of competent jurisdiction in the United States".

(b) Requests for the execution of letters rogatory should specify the name of the court out of which they issue, as well as the names of the parties to the action in which the testimony called for by the letters rogatory is desired.

(c) Requests for the execution of letters rogatory should be accompanied by English translations thereof and of accompanying documents such as exhibits and any instructions to the executing court.

With respect to the service of documents on Soviet nationals in the United States in connection with cases pending in courts in the Soviet Union, my Government has informed me that, while it cannot undertake to obligate courts or officials in the United States, no restrictions are known to exist upon

the service of such documents without the application of coercion by Soviet diplomatic and consular officers in the United States.

Accept, Excellency, the renewed assurances of my highest consideration.

WILLIAM C. BULLITT

His Excellency

MAXIM M. LITVINOV

*People's Commissar for Foreign Affairs
Moscow*

[ENCLOSURE]

EXCERPTS FROM TITLE 28, UNITED STATES CODE

"653. * * * When letters rogatory are addressed from any court of a foreign country to any district court of the United States, a commissioner of such district court designated by said court to make the examination of the witnesses mentioned in said letters, shall have power to compel the witnesses to appear and depose in the same manner as witnesses may be compelled to appear and testify in courts. (R. S. § 875; Feb. 27, 1887, C. 69, § 1, 19 Stat. 241)".

Testimony for use in foreign countries

"701. *Taking.* The testimony of any witness residing within the United States, to be used in any suit for the recovery of money or property depending in any court in any foreign country with which the United States are at peace, and in which the government of such foreign country shall be a party or shall have an interest, may be obtained, to be used in such suit. If a commission or letters rogatory to take such testimony, together with specific written interrogatories, accompanying the same, and addressed to such witness, shall have been issued from the court in which such suit is pending, on producing the same before the district judge of any district where the witness resides or shall be found, and on due proof being made to such judge that the testimony of any witness is material to the party desiring the same, such judge shall issue a summons to such witness requiring him to appear before the officer or commissioner named in such commission or letters rogatory, to testify in such suit. And no witness shall be compelled to appear or to testify under this section except for the purpose of answering such interrogatories so issued and accompanying such commission or letters. When counsel for all the parties attend the examination, they may consent that questions in addition to those accompanying the commission or letters rogatory may be put to the witness, unless the commission or letters rogatory exclude such additional interrogatories. The summons shall specify the time and place at which the witness is required to attend, which place shall be within one

hundred miles of the place where the witness resides or shall be served with such summons. (R. S. § 4071.)

"702. *Privilege of witness.* No witness shall be required, on such examination or any other under letters rogatory, to make any disclosure or discovery which shall tend to criminate him either under the laws of the State or Territory within which such examination is had, or any other, or any foreign State. (R. S. § 4072.)

"703. *Punishment of witness for contempt.* If any person shall refuse or neglect to appear at the time and place mentioned in the summons issued, in accordance with section 701 of this title, or if upon his appearance he shall refuse to testify, he shall be liable to the same penalties as would be incurred for a like offense on the trial of a suit in the district court of the United States. (R. S. § 4073.)

"704. *Fees and mileage of witnesses.* Every witness who shall so appear and testify shall be allowed, and shall receive from the party at whose instance he shall have been summoned, the same fees and mileage as are allowed to witnesses in suits depending in the district courts of the United States. (R. S. § 4074.)"

The People's Commissar for Foreign Affairs to the American Ambassador

Moscow, November "22" 1935

MR. AMBASSADOR:

Confirming conversations between the People's Commissariat for Foreign Affairs and the American Embassy in Moscow with regard to the desirability of setting forth the procedure followed in our respective countries in the matter of the execution of letters rogatory issuing out of the courts in the other, I have the honor to inform you of the procedure according to which the courts of the Union of Soviet Socialist Republics will accept for execution letters rogatory of courts in the United States of America.

1. Letters rogatory issuing out of courts in the United States for execution in the Union of Soviet Socialist Republics should be delivered through the diplomatic channel, i.e., through the American Embassy in Moscow and the People's Commissariat for Foreign Affairs, to the appropriate court in the Union of Soviet Socialist Republics and, when executed, they will be returned through the same channel.

2. Letters rogatory issued out of a court in the United States forwarded for execution in the Union of Soviet Socialist Republics should be addressed to the Supreme Court of that constituent republic which is competent to execute such letters rogatory. In case the exact title of the Soviet court is unknown to the court which issues the letters rogatory, the letters rogatory may

be addressed "to the competent court of the Union of Soviet Socialist Republics".

3. Requests of courts in the United States for the execution of letters rogatory addressed to courts in the Union of Soviet Socialist Republics should specify the name of the court out of which they issue, as well as the names of the parties to the action in which the testimony called for by the letters rogatory is desired.

4. Requests for the execution of letters rogatory should be accompanied by Russian translations of all the basic documents, such as the interrogatories themselves and any accompanying instructions to the executing court. It will be sufficient in the case of documents of secondary importance to forward short summaries of their contents in the Russian language.

5. Depending upon the nature of the letters rogatory, a fee varying from five to ten dollars (\$5 to \$10) will be charged for the execution of letters rogatory issued out of courts in the United States. In addition to this fee, remuneration for the services of experts as well as for the travelling expenses and expenditure of time by witnesses may be requested in individual cases, such remuneration to be based on rates current at the time as fixed by law or regulation then existing. Payment of fees and other possible expenses of the nature referred to above will be effected in dollars by the American Embassy at Moscow upon receipt from the People's Commissariat for Foreign Affairs of the executed letters rogatory and an appropriate statement setting forth the amount due, and the fees and services covered thereby.

6. The court in the Union of Soviet Socialist Republics by which the letters rogatory are executed shall give effect to them in accordance with the procedural rules obtaining in the Union of Soviet Socialist Republics.

7. The court issuing the letters rogatory shall, if it so desires, be informed of the date and place where the proceedings will take place, in order that the interested parties or their legal representatives may, if they desire, be present.

8. The execution of letters rogatory issuing out of a court in the United States may be refused in whole or in part, if the appropriate authorities in the Union of Soviet Socialist Republics consider that the execution thereof would affect its sovereignty or safety. In returning letters rogatory unexecuted in whole or in part, the authorities refusing such execution shall affix under seal to the letters rogatory a written statement of the reasons for such refusal.

9. Any difficulties which may arise in connection with a request by a court in the United States for the execution of letters rogatory in the Union of Soviet Socialist Republics shall be settled through the diplomatic channel.

While letters rogatory must be transmitted through the diplomatic channel, American diplomatic and consular institutions may, in connection with cases pending in the United States courts, serve juridical documents on American

nationals within the Union of Soviet Socialist Republics, without the application of coercion.

Accept, Mr. Ambassador, the renewed assurances of my highest consideration.

M. LITVINOFF

Mr. WILLIAM C. BULLITT
*Ambassador of the
United States of America
Moscow*

RELATED NOTE

*The Vice Director of the Legal Division of the People's Commissariat for
Foreign Affairs to the American Chargé d'Affaires ad interim*

COMMISSARIAT DU PEUPLE
POUR LES AFFAIRES ETRANGERES

Moscow, January 19, 1937

DEAR MR. HENDERSON,

Confirming our recent conversation I have the honor to inform you that in view of legislation now in force in the Union of Soviet Socialist Republics the payment of fees and other possible expenses to be charged for the execution of letters rogatory in accordance with the note of the Soviet Government of November 22, 1935, should be effected in Soviet currency, the amounts to be paid in rubles to form the equivalent of the fees expressed in dollars in the above-mentioned note.

Sincerely yours,

M. PLOTKIN

Mr. LOY W. HENDERSON
*Chargé d'Affaires ad interim
of the United States of America
Moscow, U.S.S.R.*